IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5523 of 1998

With

SPECIAL CIVIL APPLICATION No. 5524 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUMAR MAMADBHAI JOBAN - Petitioner(s)

Versus

AIRPORT AUTHORITY OF INDIA - Respondent(s)

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Appearance :

MR MUKESH H RATHOD for Petitioner No(s).: 1.

MR SV RAJU for Respondent No(s).: 1.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 16/08/2005

ORAL JUDGMENT

1.0 The petitioners have prayed to direct respondent - Airport Authority of India to implement the Award passed

by the Industrial Tribunal, Ahmedabad in References (ITC) No. 8 of 1985 and 3 of 1985, whereby the respondent was directed to reinstate the petitioners with continuity of service, full back wages and other benefits.

2.0 The brief facts of the case are that the petitioners herein were working as Peon and Watchman respectively with the respondent Authority. On 19.06.1982 and 01.03.1983 respectively, the services of the petitioners were brought to an end by the respondent. Against the said action, the petitioners raised a dispute, which, ultimately, culminated into references before the Industrial Tribunal, Ahmedabad.

2.1 The Industrial Tribunal, by impugned award, directed the respondent to reinstate the petitioners with continuity of service, full back wages and all other benefits. The said award was challenged before the Central Administrative Tribunal (for short, “the C.A.T.”), Ahmedabad Bench, which by order dated 19.03.1990 quashed the award passed by the Industrial Tribunal.

2.2 Against the said order of the C.A.T., Ahmedabad, the

petitioners filed Appeal being Civil Appeal No. 700 of 1991 before the Hon'ble the Supreme Court. The Hon'ble the Supreme Court, by interim order dated 11.02.1991, directed the respondent to deposit in the Industrial Tribunal, Ahmedabad, 50% arrears of the salary for the period from the date of termination till 31.01.1991 and upon deposit of the said amount, it was kept open to the petitioners to withdraw the same, without any security, subject to final result of the Appeal.

2.3 Pursuant to the interim direction of the Apex Court, the petitioners resumed their duties w.e.f. 01.03.1991. The Apex Court disposed of the said Appeal by quashing the order passed by the Central Administrative Tribunal, Ahmedabad, with an observation that the respondent's right to challenge the award of the Industrial Tribunal before the competent forum would not be prejudiced by this decision.

2.4 Pursuant to the above, the petitioners served legal Notice to the respondent requesting to implement the award passed by the Industrial Tribunal, Ahmedabad. However, no reply was given by the respondent to the said Notice. Hence, these petitions.

3.0 I have heard learned counsel for the parties and perused the documents placed on record. It is not in dispute that the petitioners herein were temporary employees of the respondent. The provisions of Section 26 of the Industrial Disputes Act, 1947, are attracted in the case of casual employees. There is no reason as to why it should not be attracted in the case of temporary employees.

3.1 In the case on hand, the petitioners were working as temporary employees with the respondent Authority. Thus, the removal of the petitioners from the service is “retrenchment” and since the respondent has violated the mandatory provisions of Section 25 of the Industrial Disputes Act, 1947, the termination is void ab-initio.

3.2 Moreover, in the impugned award, the Industrial Tribunal has recorded a finding that a new person was appointed in the resulting vacancy created by the dismissal of the petitioners. In my opinion, the Tribunal was completely justified in granting reinstatement with continuity of service to the petitioners. I am in complete agreement with the reasonings given by the

Industrial Tribunal in its impugned award qua reinstatement with continuity of service and find no reason to interfere in these petitions.

4.0 However, so far as the aspect of back wages is concerned, the Tribunal has awarded the same only on the basis of a benefit of doubt. It has not given any cogent reasons while awarding the same to the petitioners. An order for payment of back wages cannot be passed in a mechanical manner, but, a host of factors are to be taken into consideration before passing any such order.

4.1 In view of the principle laid down by the Apex Court in the case of ***Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J., pg.176*** and in the case of ***General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005(6) S.C., pg.137 [2005 (5) S.C.C. pg.591]***, the petitioners cannot be said to be entitled for back wages. Hence, the impugned award qua granting the petitioners full back wages is required to be quashed and set aside.

5.0 In above view of the matter, these petitions are partly allowed. The impugned award of the Industrial Tribunal, Ahmedabad, qua directing the respondent

Authority to reinstate the petitioners in service with continuity of service is confirmed; and, the award qua granting full back wages to the petitioners is quashed and set aside. The respondent Authority is directed to fix the Salary and Seniority of the petitioners in accordance with its Rules, after implementing the award of the Industrial Tribunal in its true spirit, within a period of three months from the receipt of writ of this order. With the above directions, the petitions stand disposed of. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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